

97TH CONGRESS }  
1st Session }

HOUSE OF REPRESENTATIVES

REPORT  
No. 97-311

## DEPARTMENT OF DEFENSE AUTHORIZATION ACT, 1982

NOVEMBER 3, 1981.—Ordered to be printed

Mr. PRICE, from the committee of conference,  
submitted the following

### CONFERENCE REPORT

[To accompany S. 815]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 815) to authorize appropriations for fiscal year 1982, for procurement of aircraft, missiles, naval vessels, tracked combat vehicles, torpedoes, and other weapons and for research, development, test, and evaluation for the Armed Forces, to authorize appropriations for fiscal year 1982 for operations and maintenance expenses of the Armed Forces, to prescribe the authorized personnel strength for each active duty component and the Selected Reserve of each Reserve Component of the Armed Forces and for civilian personnel of the Department of Defense, to authorize the military training student loads, to authorize appropriations for fiscal year 1982 for civil defense, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the House amendment insert the following:

*That this Act may be cited as the "Department of Defense Authorization Act, 1982".*

shall promptly notify Congress of any deferral of an end-strength limitation under this paragraph."

**PROHIBITION OF CERTAIN CIVILIAN PERSONNEL MANAGEMENT CONSTRAINTS**

**SEC. 904.** (a) Chapter 4 of title 10, United States Code, is amended by adding at the end thereof the following new section:

**"§ 140b. Prohibition of certain civilian personnel management constraints**

"The civilian personnel of the Department of Defense shall be managed each fiscal year solely on the basis of and consistent with (1) the workload required to carry out the functions and activities of the department, (2) the funds made available to the department for such fiscal year, and (3) the authorized end strength for the civilian personnel of the department for such fiscal year. The management of such personnel in any fiscal year shall not be subject to any man-year constraint or limitation."

(b) The table of sections at the beginning of such chapter is amended by adding at the end thereof the following new item:

"140b. Prohibition of certain civilian personnel management constraints."

**AUTHORIZATION OF MILITARY COOPERATION WITH CIVILIAN LAW ENFORCEMENT OFFICIALS**

**SEC. 905.** (a)(1) Part I of subtitle A of title 10, United States Code, is amended by adding after chapter 17 the following new chapter:

**"CHAPTER 18—MILITARY COOPERATION WITH CIVILIAN LAW ENFORCEMENT OFFICIALS**

"Sec.

"371. Use of information collected during military operations.

"372. Use of military equipment and facilities.

"373. Training and advising civilian law enforcement officials.

"374. Assistance by Department of Defense personnel

"375. Restriction on direct participation by military personnel.

"376. Assistance not to affect adversely military preparedness.

"377. Reimbursement.

"378. Nonpreemption of other law.

**"§ 371. Use of information collected during military operations**

"The Secretary of Defense may, in accordance with other applicable law, provide to Federal, State, or local civilian law enforcement officials any information collected during the normal course of military operations that may be relevant to a violation of any Federal or State law within the jurisdiction of such officials.

**"§ 372. Use of military equipment and facilities**

"The Secretary of Defense may, in accordance with other applicable law, make available any equipment, base facility, or research facility of the Army, Navy, Air Force, or Marine Corps to any Federal, State, or local civilian law enforcement official for law enforcement purposes.

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#### CIVILIAN PERSONNEL MANAGEMENT CONSTRAINTS

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#### COOPERATION WITH CIVILIAN LAW ENFORCEMENT OFFICIALS

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#### COOPERATION WITH CIVILIAN ENFORCEMENT OFFICIALS

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#### "§ 373. Training and advising civilian law enforcement officials

"The Secretary of Defense may assign members of the Army, Navy, Air Force, and Marine Corps to train Federal, State, and local civilian law enforcement officials in the operation and maintenance of equipment made available under section 372 of this title and to provide expert advice relevant to the purposes of this chapter.

#### "§ 374. Assistance by Department of Defense personnel

"(a) Subject to subsection (b), the Secretary of Defense, upon request from the head of an agency with jurisdiction to enforce—

"(1) the Controlled Substances Act (21 U.S.C. 801 et seq.) or the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.);

"(2) any of sections 274 through 278 of the Immigration and Nationality Act (8 U.S.C. 1324-1328); or

"(3) a law relating to the arrival or departure of merchandise (as defined in section 401 of the Tariff Act of 1930 (19 U.S.C. 1401)) into or out of the customs territory of the United States (as defined in general headnote 2 of the Tariff Schedules of the United States (19 U.S.C. 1202)) or any other territory or possession of the United States,

may assign personnel of the Department of Defense to operate and maintain or assist in operating and maintaining equipment made available under section 372 of this title with respect to any criminal violation of any such provision of law.

"(b) Except as provided in subsection (c), equipment made available under section 372 of this title may be operated by or with the assistance of personnel assigned under subsection (a) only to the extent the equipment is used for monitoring and communicating the movement of air and sea traffic.

"(c)(1) In an emergency circumstance, equipment operated by or with the assistance of personnel assigned under subsection (a) may be used outside the land area of the United States (or any territory or possession of the United States) as a base of operations by Federal law enforcement officials to facilitate the enforcement of a law listed in subsection (a) and to transport such law enforcement officials in connection with such operations, if—

"(A) equipment operated by or with the assistance of personnel assigned under subsection (a) is not used to interdict or to interrupt the passage of vessels or aircraft; and

"(B) the Secretary of Defense and the Attorney General jointly determine that an emergency circumstance exists.

"(2) For purposes of this subsection, an emergency circumstance may be determined to exist only when—

"(A) the size or scope of the suspected criminal activity in a given situation poses a serious threat to the interests of the United States; and

"(B) enforcement of a law listed in subsection (a) would be seriously impaired if the assistance described in this subsection were not provided.

#### "§ 375. Restriction on direct participation by military personnel

"The Secretary of Defense shall issue such regulations as may be necessary to insure that the provision of any assistance (including the provision of any equipment or facility or the assignment of any

personnel) to any civilian law enforcement official under this chapter does not include or permit direct participation by a member of the Army, Navy, Air Force, or Marine Corps in an interdiction of a vessel or aircraft, a search and seizure, arrest, or other similar activity unless participation in such activity by such member is otherwise authorized by law.

**"§ 376. Assistance not to affect adversely military preparedness**

"Assistance (including the provision of any equipment or facility or the assignment of any personnel) may not be provided to any civilian law enforcement official under this chapter if the provision of such assistance will adversely affect the military preparedness of the United States. The Secretary of Defense shall issue such regulations as may be necessary to insure that the provision of any such assistance does not adversely affect the military preparedness of the United States.

**"§ 377. Reimbursement**

"The Secretary of Defense shall issue regulations providing that reimbursement may be a condition of assistance to a civilian law enforcement official under this chapter.

**"§ 378. Nonpreemption of other law**

"Nothing in this chapter shall be construed to limit the authority of the executive branch in the use of military personnel or equipment for civilian law enforcement purposes beyond that provided by law prior to the enactment of this chapter."

(2) The tables of chapters at the beginning of subtitle A of such title and at the beginning of part I of subtitle A of such title are amended by adding after the item relating to chapter 17 the following new item:

"18. Military Cooperation with Civilian Law Enforcement Officials 371".

(b) Not later than 30 days after the end of the 180-day period beginning on the date of the enactment of this Act, the Secretary of Defense shall submit a comprehensive report to Congress on the operation through the end of such period of chapter 18 of title 10, United States Code (as added by subsection (a)). Such report shall include findings of the Secretary concerning the effect of assistance provided under such chapter.

**DETERMINATION OF CHARGES FOR CHAMPUS PAYMENTS**

SEC. 906. (a)(1) Subsection (h) of section 1079 of title 10, United States Code, is amended to read as follows:

"(h)(1) Payment for a charge for services by an individual health-care professional (or other noninstitutional health-care provider) for which a claim is submitted under a plan contracted for under subsection (a) may be denied only to the extent that the charge exceeds the amount equivalent to the 90th percentile of billed charges made for similar services in the same locality during the base period.

"(2) For the purposes of paragraph (1), the 90th percentile of charges shall be determined by the Secretary of Defense, in consultation with the Secretary of Health and Human Services, and the base period shall be a period of twelve calendar months. The base period shall be adjusted at least once a year."

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## GENERAL PROVISIONS

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## *Military cooperation with civilian law enforcement officials (sec. 905)*

The Senate bill contained a provision (sec. 915) that would clarify authority for cooperation between military and civilian law enforcement officials. The House amendment contained a similar provision (sec. 908). After substantial discussion the conferees agreed on a compromise included in Section 905 of the conference report.

Section 905 establishes a new chapter in Part I, subtitle A of title 10, United States Code, to authorize certain military cooperation with civilian law enforcement officials. The new chapter—chapter 18—would contain eight sections which (1) permit various forms of military assistance to civilian law enforcement officials, (2) restrict the direct participation of military personnel in law enforcement activities, (3) require that furnishing assistance not adversely affect military preparedness, (4) provide for reimbursement for assistance to civilian authorities, and (5) make clear that the chapter does not limit the authority granted by existing law. The new sections and their provisions are as follows:

*Use of information collected during military operations (sec. 371).* Both bills clarify existing authority for the Secretary of Defense to share information collected during the normal course of military operations. The House bill contained two clarifying phrases, both of which were accepted by the Senate. First, the House bill permits such information sharing "in accordance with other applicable laws" to assure the continued application of the Privacy Act. Second, the House bill provides that information may only be given to law enforcement officials who have jurisdiction to enforce the laws connected with the disclosed information. These provisions reflect current practice.

*Use of Army, Navy, Air Force and Marine Corps equipment and facilities (sec. 372).* Both bills contained provisions clarifying the authority of the Secretary of Defense to make available certain military equipment and facilities. The House bill contained three clarifying provisions that were accepted by the Senate. First, the Senate bill uses the term "armed forces" in reference to the ownership of the equipment and facilities involved. But that term, as defined in 10 U.S.C. 101, includes the Coast Guard. Therefore, to avoid authorizing the Secretary of Defense to lend or otherwise dispose of Coast Guard equipment and facilities, this section is limited to the equipment and facilities of the Army, Navy, Air Force or Marine Corps. Second, the House bill includes a limitation on the loan or other disposition of equipment and facilities to situations where such action is in conformity with other applicable laws. This provision assures the continued application of existing law, such as the Federal Property and Administrative Services Act of 1949. Finally, the House bill limits the use of the military equipment and facilities to law enforcement purposes. This limitation is consistent with current practice.

*Training and advising civilian law enforcement officials (sec. 373).* Both bills contain provisions authorizing the use of military personnel to train civilians in the operation of military equipment. The House bill authorized training for maintenance. The Senate accepted this change. The Senate also accepted the House provision which limited the provision of training assistance to personnel of the Army, Navy, Air Force or Marine Corps.

*Assistance by Department of Defense personnel (sec. 374).* This section, which is not found in the Senate bill, is derived from the House bill. Under the provisions of this section military personnel are authorized, in certain limited circumstances, to operate and maintain (or assist in the operation and maintenance of) equipment made available under proposed section 372. Assistance under this section is subject to the same procedures and requirements which apply to making equipment and facilities available under proposed section 372. The restrictions of proposed section 375 apply, as do the military preparedness considerations of proposed section 376. So do the reimbursement provisions of proposed section 377.

The assistance shall be limited to situations where the training of civilian personnel would be unfeasible or impractical from a cost or time perspective. The request for such assistance should come from the Cabinet-level official heading the Federal agency with jurisdiction to enforce the criminal provisions of the drug, customs or immigration laws.

The authority of military personnel to operate or maintain (or assist in operating and maintaining) equipment made available under proposed section 372 is granted for certain specific circumstances. First, under section 374(b), such assistance generally may be given only to the extent that the equipment is used for monitoring and communicating the movement of air and sea traffic. Indeed, this is the primary type of assistance sought and needed by Federal drug enforcement agencies.

However, the conferees recognized that there might be certain limited, emergency circumstances where it would be helpful if equipment provided under proposed section 372 and operated or maintained by Department of Defense personnel could be used for more than data collection. Therefore, section 374(c) permits the use of such equipment as a base of operations outside the land area of the United States in certain emergency situations. In these situations, such equipment can be used to move civilian law enforcement personnel so they can launch an enforcement operation on their own.

The conferees were concerned that use of military personnel in such operations had the potential for placing such personnel in confrontational situations. Therefore, certain safeguards were incorporated in this provision to assure the proper role for military personnel. The authority found in subsection (c) is limited to emergency situations, as determined jointly by the Secretary of Defense and the Attorney General, using a definition found in subsection (c)(2). That definition is intended to focus on the threat of large scale criminal activity at a particular point in time or over a finite period. It should not be construed to permit the declaration of an emergency which would permit use of this authority on a routine or extended basis. In order to clarify the role that the military personnel and equipment are authorized to play under subsection (c), that subsection also states that equipment operated by or with the assistance of military personnel may not be used to interdict or interrupt the passage of vessels or aircraft.

Subsection (c) also permits the transportation of civilian law enforcement officials in military equipment made available under section 372, and operated by Department of Defense personnel under 374(a). In connection with law enforcement operations outside the land area of the United States, such transportation may be

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*Defense personnel (sec. 374).* This section of the Senate bill, is derived from the provisions of this section military personnel in certain circumstances, to operate and maintain and maintenance of equipment under section 372. Assistance under this section includes procedures and requirements which are facilities available under proposed section 375 apply, as do the provisions of proposed section 376.

limited to situations where the training is infeasible or impractical from a cost basis for such assistance should come from the Federal agency with jurisdictional provisions of the drug, customs or

personnel to operate or maintain (or maintain) equipment made available under section 372 and operated or maintained (4(b), such assistance generally may be used if the equipment is used for monitoring movement of air and sea traffic. Assistance sought and needed by the

recognized that there might be certain instances where it would be helpful if proposed section 372 and operated or maintained defense personnel could be used for operations outside the land area of emergency situations. In these situations, used to move civilian law enforcement launch an enforcement operation on

that use of military personnel is essential for placing such personnel in the field, certain safeguards were included to assure the proper role for military personnel in subsection (c) is limited to emergency situations jointly by the Secretary of Defense and a definition found in subsection (c) to focus on the threat of large scale operations in time or over a finite period to permit the declaration of an emergency use of this authority on a routine basis to verify the role that the military personnel are authorized to play under subsection (c), equipment operated by or with the military may not be used to interdict or in aircraft.

transportation of civilian law enforcement equipment made available under section 372 of the Department of Defense personnel law enforcement operations outside the United States, such transportation may be

provided to or from a base of operations, such as a naval ship, or to or from fixed sites outside the land area of the United States. For example, if the Coast Guard, in an emergency circumstance, is launching an enforcement operation out of the United States Naval Base at Guantanamo Bay, Cuba, Coast Guard or DEA personnel could be transported to or from the base—from any location—in military equipment utilizing military personnel to operate such equipment.

Although such transportation of civilian law enforcement personnel is permitted only under emergency circumstances, the conferees note, and intend, that the need to provide such transportation can itself be an important factor to consider when determining whether enforcement would be seriously impaired if the military assistance is not provided.

The existence of the required emergency must be jointly determined by the Secretary of Defense and Attorney General. The existing broad delegation authority that current law extends to both the Secretary of Defense (10 U.S.C. 133(d)) and the Attorney General (28 U.S.C. 510) should apply to the joint determination made under subsection (c). However, the conferees expect and intend that such delegation will be extended only to appropriate high level officials in the respective Departments.

*Restriction on direct participation by military personnel (sec. 375).* Both bills provided for restrictions on the direct participation of military personnel in law enforcement activities. The Senate bill precluded the use of military personnel in arrests, searches, seizures or other similar activities unless otherwise authorized by law. The House bill contained a similar limitation, but provided an exception which allowed military personnel to assist in arrests and seizures outside the land area of the United States under certain limited circumstances. None of the federal enforcement agencies requested or indicated a desire for such authority for military personnel. Accordingly, the authority contained in the House bill for this form of direct law enforcement activity by military personnel was deleted by the conferees.

The section agreed upon by the conferees requires that the Secretary of Defense shall issue regulations to insure that the provision of any assistance under this chapter does not include direct participation by a member of the Army, Navy, Air Force or Marine Corps in an interdiction of a vessel or aircraft or in a search, seizure, arrest or other similar activity, unless such activity is otherwise authorized by law. Nothing in this section, however, limits the inherent authority of military personnel to defend themselves or to protect Federal property. Nothing in this chapter adversely affects the authority of the Attorney General to request assistance from the Department of Defense under the provisions of 21 U.S.C. 873(b). The limitation posed by this section is only with respect to assistance authorized under any part of this chapter.

*Assistance not to adversely affect military preparedness (sec. 376).* Both bills provide that the assistance rendered under this chapter by the Department of Defense shall not adversely affect the military preparedness of the United States. The conferees state this general rule in the statute, and also require the Secretary of Defense to issue such regulations as may be necessary to insure that result.

*Reimbursement (sec. 377).* This section authorizes the Secretary of Defense to issue regulations providing that reimbursement may be a condition of the assistance to civilian law enforcement officials under this chapter. This provision was contained, in slightly different form, in both bills. The regulation should reflect sufficient flexibility to take into consideration the budgetary resources available to civilian law enforcement agencies.

*Non-pre-emption of other law (sec. 378).* Section 378 clarifies the intent of the conferees that the restrictions on the assistance authorized by the new chapter in title 10 apply only to the authority granted under that chapter. Nothing in this chapter should be construed to expand or amend the Posse Comitatus Act. In particular, because that statute, on its face, includes the Army and Air Force, and not the Navy and Marine Corps, the conferees wanted to ensure that the conference report would not be interpreted to limit the authority of the Secretary of Defense to provide Navy and Marine Corps assistance under, for example, 21 U.S.C. 873(b). However, nothing in this chapter was in any way intended to rescind or direct the rescission of any current regulations applying the policies and terms of the Posse Comitatus Act to the activities of the Navy or Marine Corps.

*Report requirement.* Subsection (b) of section 908 of the bill provides that the Secretary of Defense shall, not later than thirty days after the expiration of 180 days after the effective date of this chapter, submit a report to Congress on the assistance authority by this chapter. The report shall include findings with respect to the effect of assistance provided under this chapter.

The assistance of the military authorized by this chapter will be used primarily by the United States Department of Justice, the Coast Guard and the Customs Service. Thus, the conferees expect that the Secretary of Defense will include within this report the views of the Attorney General, the Commandant of the Coast Guard and the Secretary of the Treasury. In addition, in order to assess the relative importance of the assistance rendered by the military, the conferees expect that the report will address the desirability of expanding or contracting the scope of the assistance authorized by this chapter.

*Determination of CHAMPUS payments (Sec. 906)*

The House amendment contained a provision (sec. 905) that would eliminate the requirement for the use of customary charges in determining reimbursement schedules for physicians and would also provide that the 12-month base period that is currently used for determining medical charges be adjusted at least once a year.

The Senate bill contained no similar provision.

The Senate recedes.

*Increase in dollar thresholds for certain defense contract regulations (Sec. 907)*

The House amendment contained a provision (sec. 903) that would amend sections 2304(a)(3) and 2304(g) of title 10, United States Code, to raise the current ceiling for use of the simplified small purchase procedures from \$10,000 to \$25,000. The House provision would also amend section 2306(f)(1) of title 10 to increase the certification threshold for the Truth in Negotiations Act (Public Law 87-653) from \$100,000 to \$500,000. Further, the House provi-